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Memo re completion of survey of conflicts of interest from 1 Jan 86 to 30 Sept 87 of prosecutions across the country with att summary of prosecutions *copy provided to S&C*

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MEMORANDUM

Office of Government Ethics

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Subject: Recent Conflict of Interest Prosecutions

From:  Frank Q. Nebeker
Director

To: Designated Agency Ethics Officials and Inspectors General

We have just completed our annual survey of conflict of interest prosecutions around the country. This summary of prosecutions, a copy of which is attached, contains cases that were not previously reported for the period from January 1, 1986 through September 1987 and updates previously reported cases.

Through the Executive Office for United States Attorneys, Department of Justice, we surveyed 93 United States Attorneys' Offices and received 82 responses. Only seven of the offices responding indicated that conflict of interest prosecutions had occurred in their districts during the reporting period.

In the interest of fairness, we have, in most cases, omitted the names and other identifying information from our report. If you find the facts of a case relevant to a matter of concern to you and would like further information about it, please do not hesitate to contact this Office.

Attachment

1. The defendant was a Senior Accountant for the Federal Deposit Insurance Corporation (FDIC) in San Francisco. He and his wife had a financial interest in Firm A which provided temporary employees and received income based on their employment. It is alleged that the defendant, in his position with the FDIC, participated personally and substantially in decisions to hire employees of the firm to provide services to the FDIC's San Francisco regional office. During a nine-month period in 1985, the FDIC paid Firm A approximately \$135,000 as compensation for the temporary employees. The defendant allegedly retained approximately \$55,000 of that money for personal use.

On December 9, 1987, a grand jury indicted the defendant on one-count of a violation of 18 U.S.C. § 208(a).

2. The defendant was a Coast Guard employee. While a government employee, he appeared in his personal capacity on behalf of a private party seeking a contract from the Coast Guard by participating on behalf of the private company in a meeting with Coast Guard officials. The company paid him for his efforts.

The defendant was charged with violating 18 U.S.C. § 203. Evidence was suppressed in pretrial motions. The case is currently on appeal.

3. The defendant was a Commercial Officer for the Department of Commerce in Bombay. Indian nationals alleged that the defendant was paid \$3400 to make business contacts in the United States for an Indian businessman, which he was to do as part of his government job. In addition, they alleged that he imported auto parts duty free for the Indian nationals.

It was alleged that the defendant had violated 18 U.S.C. § 203 and 18 U.S.C. § 209. Prosecution was declined.

4. The defendant was a Department of the Navy employee. It was alleged that the defendant, while serving in that position, represented Company A in matters before other government agencies, including the Air Force, and that Company A paid him \$37,000.

It was alleged that the defendant had violated 18 U.S.C. § 205. Prosecution was declined.

5. The defendant, a vender, received numerous tickets for offenses such as vending in the wrong place. The defendant paid off the officer who issued the tickets, and the officer reported this to his superior. Subsequently, the officer got the defendant on tape making an offer to pay more money.

The defendant was charged with violating 18 U.S.C. § 209(a). He pleaded to two counts of section 209(a) on February 12, 1986.

6. The defendant, a Department of Agriculture employee, directed his subordinates to a training course run by a company which was owned by a man with whom he lived and with whom he owned a condominium.

It was alleged that the defendant had violated 18 U.S.C. § 208, but prosecution was declined on the basis that under the facts of this case joint ownership of a condominium did not constitute a partnership for purposes of the conflict of interest law.

7. The defendant was an employee of the General Accounting Office. While a government employee, he represented a private company in which he and his wife had an interest in a matter before the Office of Personnel Management.

It was alleged that the defendant had violated 18 U.S.C. § 205. The case is pending in the U.S. Attorney's Office.

8. United States v. Martel, 792 F.2d. 630 (7th Cir. 1986)

A defense contractor, Pace Development, Inc., and its two principal corporate officers, Paul Martel and Dan Martel, were convicted by a jury of making false statements and conspiring to defraud the United States in connection with fraudulent billings submitted to the government. In addition, the contractor was convicted of illegally supplementing a government employee's salary in violation of 18 U.S.C. § 209.

Pace was charged with unlawfully giving compensation to a government employee in violation of 18 U.S.C. § 203(b). The government attempted to prove that Pace had compensated an employee of the Army's Rock Island Arsenal for services the employee had rendered to Pace. The employee had apparently worked closely with Pace and approved the invoices that company submitted to the Army for payment. In April of 1980, the employee sought funds from the Army to attend a seminar in Missouri, but the Army refused. The employee went anyway, and his airfare and accommodations were arranged and paid for by Pace. The employee failed to reimburse Pace.

The court instructed the jury that, if it did not find Pace guilty of section 203(b), it could consider convicting it of the lesser included offense of supplementing a government employee's salary in violation of 18 U.S.C. § 209. The jury acquitted Pace on the section 203(b) charge but found it guilty on the section 209 offense.

The defendants appealed all of the convictions, which were affirmed on appeal.

9. The defendant was indicted for violating 18 U.S.C. § 209(a) by supplementing the salary of a government employee. He made a plea agreement and received a suspended sentence.

10. The defendant was an employee of the federal government. He had a nighttime consulting job through which he helped a company submit bids for a defense contract. For putting the bids together, he received a \$1000 consulting fee.

The defendant was charged with violating 18 U.S.C. § 203(a). He pleaded to an information.

11. The defendant worked at Hill Air Force Base in the base level procurement office. In that capacity, she would receive bids and, as a contract negotiator, go with the lowest bid. Her husband was in the contracting business, and the defendant would advise him of the existing bids so that he could underbid, or she would submit fake bids along with his bids.

The defendant was indicted in September 1986 for violating 18 U.S.C. § 208. She pleaded guilty to one count and was sentenced in June 1987.

12. On May 7, 1986, a Department of the Navy employee and his wife were convicted of six counts of 18 U.S.C. § 208, the wife as an aider and abettor.

The husband worked for the Department of the Navy, examining the marketplace and recommending to purchase agents companies from which to buy supplies for a Naval air rework facility. In March of 1985, the employee and his wife established a private business. The business was to be run by the wife, using her maiden name, and the wife of a friend. The employee made six written recommendations which resulted in six contracts between the Department of the Navy and his wife's business.

The husband received three years' probation and the wife received thirty months' probation. Each was assessed a \$300 Special Monetary Assessment. The convictions were affirmed and are final.

13. The defendant was employed by the Department of the Navy. He received approximately \$400 in compensation from each of six fellow Naval air rework facility employees for preparing the paperwork for their hearing loss claims against the government.

On September 17, 1986, the defendant was indicted on several counts of 18 U.S.C. § 203. In exchange for the dismissal of six similar counts, he was convicted on November 26, 1986 on one count of 18 U.S.C. § 203. The defendant was sentenced to one year probation and a \$50 Special Monetary Assessment.

Other Cases

14. United States v. Gorman, 807 F. 2d 1299 (6th Cir. 1986)

Gorman, the appellant, was an Economic Crime Specialist and an Assistant United States Attorney with the U.S. Attorney's Office for the Northern District of Ohio. From August 1982 through February or April of 1983, Gorman was lead prosecutor on a check kiting scheme which involved a bankrupt, James Hartley, and several banks with which Hartley had dealt. Gorman worked closely on the case with Merle Weber, a creditors' representative who had been hired by some of Hartley's creditors to recover his outstanding debts. Weber was to receive 10% of the funds recovered by those creditors.

The trustee of the bankruptcy was Quentin Derryberry, who was assisted by a law clerk named Christine De Sanctis. De Sanctis told Gorman that she and Weber were

planning on forming a creditors' representative business when she left law school and that the funds to start it would come from the proceeds of the Hartley case.

On August 27, 1982, Gorman met De Sanctis and stated that he would like to work with her and Weber. At a condition of employment, he stated that he would need \$300,000.00 put in an escrow account to cover two years' salary. Gorman indicated that either Weber could provide the money or two Hartley creditors with potential criminal liability could provide it. Gorman indicated that if the creditors provided the money, he would write his report on the Hartley case so as to discourage their prosecution.

Throughout this period, Gorman was in dire financial straits. In November 1982, he agreed to accept a \$25,000.00 loan from Weber. The money was not immediately forthcoming, so Gorman contacted Weber, explaining that he needed \$2,000.00 that day. He indicated that if he did not receive the money, he would lose his job and the Hartley investigation would stop. Weber arranged for \$2,000.00 to be taken from the account of a Mr. Huffman, Chairman of the Board of a local bank, as a loan to Weber from Huffman for the purpose of making a loan to Gorman. Other such loans occurred subsequently.

Gorman was convicted on one count each of a violation of 18 U.S.C. § 208 negotiating for employment, and 18 U.S.C. § 201(g), receiving illegal gratuities. Gorman appealed his conviction, but the court of appeals affirmed his conviction.

The following two cases were reported in the June 1987 "Report to Congress on the Activities and Operations of the Public Integrity Section for 1986," prepared by the Public Integrity Section, Criminal Division, U.S. Department of Justice.

15. The defendant was a Mississippi businessman and Farmers Home Administration (FmHA) loan applicant. He pleaded guilty to a two-count information charging supplementation of the salary of a government employee in violation of 18 U.S.C. § 209(a).

Tubertini acknowledged that he had on two occasions given money to the former Chief of Rural Housing for the FmHA in Mississippi. He first gave him \$4,000 in cash and approximately two years later, he gave him another payment of \$9,500 in cash. He made both payments in appreciation for the government employee's assistance on his FmHA loan applications.

As a result of his conviction, the defendant was sentenced to five years' probation, a \$10,000 fine, and \$140,000 in restitution to FmHA.

16. The defendant was the former head of the General Services Section, American Embassy, Pretoria. He is currently a fugitive in South Africa, seeking to escape prosecution on theft charges. In 1986, the Pretoria Supreme Court, Pretoria, South Africa, reversed the earlier decision of the Pretoria Magistrate's Court that he was extraditable. The Pretoria Magistrate's Court had held that the defendant would be

returned to the United States to answer theft charges (18 U.S.C. § 641) contained in an indictment returned by a federal grand jury in Austin, Texas on December 15, 1981. One of the reasons cited for the Pretoria Supreme Court's decision was that the extradition request did not demonstrate that the alleged theft of government property had a harmful effect on the United States government.

The defendant is also a fugitive in relation to an indictment charging him with a violation of 18 U.S.C. § 208(a) and a violation of 18 U.S.C. § 1001 (making a false statement). The United States' extradition request did not include these charges as grounds for the defendant's extradition because the extradition treaty upon which the request was based does not recognize those offenses as grounds for extradition.